

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: Janet Marie Olson,

Debtor.

BKY 08-44908

ADV _____

US Bank, N.A.,

Plaintiff,

vs.

Janet Marie Olson,

Defendant.

COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT
AND FOR JUDGMENT

Plaintiff, for its cause of action against Defendant, alleges:

I.

Defendant, Janet Marie Olson, filed a petition for relief under Chapter 13 of the Title 11, United States Code, on September 25, 2008.

II.

Plaintiff, US Bank, N.A., is a creditor of Defendant.

III.

This is a core proceeding over which the court has jurisdiction under Title 28, United States Code, Sections 157 and 1334 and Rule 7001 of the Federal Rules of Bankruptcy

Procedure. Venue is proper in this judicial district pursuant to Title 28, United States Code, Sections 1408 and 1409.

IV.

This is an adversary proceeding to determine the dischargeability of a debt under Title 11, United States Code, Sections 523(a)(2)(A), 523(a)(2)(C) and 523(a)(14A).

V.

Plaintiff issued Defendant a VISA credit card on or about March 1, 2005

VI.

Plaintiff is the holder of an unsecured claim against Defendant arising out of charges made by her on his VISA account with Plaintiff, with account number ending xxxx-xxxx-xxxx-4287.

VII.

Defendant made numerous charges totaling \$10,870.63 on her VISA account with Plaintiff. A copy of the statement for the charges is attached as Exhibit "A" and is incorporated herein by reference.

VIII.

Defendant made numerous charges for luxury items against her VISA account with Plaintiff from April 2008 through September 2008 in the sum of \$6,574.25, all within ninety (90) days prior to filing bankruptcy.

IX.

The indebtedness for the charges made within ninety (90) days prior to the bankruptcy filing is presumed to be nondischargeable pursuant to Title 11, United States Code, Section 523(a)(2)(C).

X.

On May 14, 2008, Defendant paid Wright County, Minnesota taxes totaling \$1,415.00 against her VISA account with Plaintiff.

XI.

The indebtedness for the above-referenced charge to pay the tax to Wright County, Minnesota is nondischargeable pursuant to Title 11, United States Code, Section 523(a)(14A).

XII.

Defendant made the aforementioned charges against her VISA account with Plaintiff at a time when Defendant was unable to meet her existing financial obligations as they became due.

XIII.

Defendant's schedules filed in her bankruptcy case, as amended, reflect that her total monthly income is \$3,999.02 and total monthly expenses are \$3,698.75; therefore, Defendant has a net monthly gain of \$300.27 per month.

XIV.

Defendant's schedules reflect unsecured creditors holding claims for consumer debt and credit cards totaling \$129,128.10. Therefore, based on minimum monthly payments of 2% of the total account balances each month, the total minimum payments Defendant would have been required to pay on her accounts was over \$2,582.00 each month, resulting in a total household deficit of over \$2,282.00 per month.

XV.

At the time Defendant made the above-referenced charges with Plaintiff, Defendant represented that she had the ability to repay the debt to Plaintiff, when in fact, Defendant did not have the ability to repay the debt to Plaintiff.

XVI.

At the time Defendant made the above-referenced charges, Defendant represented she had the intent to repay the debt, when in fact, Defendant did not intend to repay the debt to Plaintiff.

XVII

Defendant made the representations to Plaintiff with the intention and purpose of deceiving Plaintiff.

XVIII.

Plaintiff justifiably relied on Defendant's representations and Plaintiff suffered a loss as a proximate result of the representations.

XIX.

Defendant made the above-referenced charges under false pretenses, a false

representation or actual fraud, and for that reason the indebtedness to Plaintiff is nondischargeable in bankruptcy pursuant to Title 11, United States Code, Sections 523(a)(2)(A) and 523(a)(2)(C).

WHEREFORE, Plaintiff prays for judgment as follows:

1. That this court determine the debt of Defendant, Janet Marie Olson, to Plaintiff, US Bank, N.A., in the amount of \$10,870.63, plus interest at the contract rate from and after September 25, 2008, is nondischargeable in bankruptcy under Title 11, United States Code, Sections 523(a)(2)(A), 523(a)(2)(C), and 523(a)(14A)
2. That Plaintiff have judgment against Defendant for its costs, disbursements and reasonable attorney's fees herein.
3. For such other and further relief as the court may deem just and proper in the premises.

DUDLEY AND SMITH, P.A.

Dated: December 22, 2008

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